

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2009

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D053395 Enrique M. v. Angelina V.

Cause called on merits. Enrique Montegudo argued for appellant. Cause submitted.

Court recessed at 9:19 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D052887 People v. Torres

D054013 In re Torres on Habeas Corpus

Cause called on merits. Jill Marnie Klein, Esq. argued for appellant. Gary W. Brozio, Deputy Attorney General argued for respondent. Ms. Klein replied. Cause submitted as to appeal only.

D053066 In re Cecil J., a juvenile

Cause called on merits. Zandra Luz Lopez, Esq. argued for appellant. Emily Hanks, Deputy Attorney General argued for respondent. Ms. Lopez replied. Cause submitted.

**D052903) Costa Serena Owners Coalition v. Costa Serena Architectural
Committee**

**D053159) Costa Serena Owners Coalition v. Costa Serena Architectural
Committee**

**D053553 Costa Serena Owners Coalition v. Costa Serena Architectural
Committee**

Cause called on merits. Jeffery A. Miller, Esq. argued for appellant, Costa Serena Architectural Committee. K. Martin White, Esq. argued for appellant, Diaz. Gregory C. Kane, Esq. argued for respondent. Mr. Miller replied. Mr. White replied. Cause submitted.

Court recessed at 10:22 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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April 13, 2009 (Continued)

D052315 Sharp v. City of San Diego

Cause called on merits. Kent L. Sharp, Esq. argued for appellant. Christine M. Leone, Esq. argued for respondent. Mr. Sharp replied. Cause submitted.

D053176 Doe et al. v. State of California Department of Justice

Cause called on merits. Michael D. McGlinn, Esq. argued for appellant. Marissa Bejarano, Deputy Attorney General argued for respondent. Mr. McGlinn replied. Cause submitted.

D052650 New Century Corporation v. Positive Investments, Inc.

Cause called on merits. James Taylor Grant, Esq. argued for appellant. Steven Neil Kurtz, Esq. argued for respondent. Mr. Taylor replied. Cause submitted.

D052079) National Metal Technologies, Inc., et al. v. Greene et al.

D053300) National Metal Technologies, Inc., et al. v. Billie

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Serena Nevez, Esq. argued for respondent, Greene and etc. Luther Horton, Esq. argued for respondent, Willingham and etc. Mr. Williams replied. Cause submitted.

D051166 Leeper-Johnson v. Prudential Insurance Company of America

Cause called on merits. Evan M. Tager, Esq. argued for appellant. Charles Moore, Esq. argued for respondent. Mr. Tager replied. Cause submitted.

Court recessed at 3:18 p.m. until Tuesday, April 14, 2009 at 9:00 a.m.

D053547 Cozzi v. McCain et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D054904 In re A.H., a Juvenile

The notice of appeal filed April 6, 2009, has been read and considered by Associate Justices Irion, Benke and McDonald. The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refile a notice of appeal after an appealable order or judgment has been entered.

D054903 In re N.B., a Juvenile

The notice of appeal filed April 6, 2009, has been read and considered by Associate Justices Irion, Benke and McDonald. The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refile a notice of appeal after an appealable order or judgment has been entered.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2009 (Continued)

D054915 In re B.G., a Juvenile

The notice of appeal filed April 6, 2009, has been read and considered by Associate Justices Irion, Benke and McDonald. The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refile a notice of appeal after an appealable order or judgment has been entered.

D053308 People v. Guillemot

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D052725 People v. Randolph

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

D052142 People v. Kircher

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., Haller, J.

D052881 Lyon Financial Services, Inc. v. Gabriel T. Fabella, M.D., Inc., et al.

Summary judgment is affirmed. Costs are awarded to respondent. Huffman, J.;
We Concur: McConnell, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052345 People v. Griffin

Judgment affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D051859 People v. Williams et al.

Judgment affirmed. Benke, Acting P.J.; We Concur: Nares, J., Aaron, J.

D053992 In re T.B., a Juvenile

The judgments are affirmed. Nares, J.; We Concur: McConnell, P.J., Benke, J.

D054248 People v. Garrett

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D053968 In re Kelly M., a Juvenile

The petition for rehearing is denied.

D054698 Cost Plus, Inc. v. Superior Court of San Diego County/8650 Villa La Jolla, Inc., et al.

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D052747 Aldana et al. v. Castro et al.

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Randall L. Winet, Esq. argued for respondent. Mr. Mitchell replied. Cause submitted.

Court recessed at 9:23 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D053397 Gilliland v. Bradshaw

Cause called on merits. Conrad Herring, Esq. argued for appellant. Thomas William Smith, Esq. argued for respondent. Mr. Herring replied. Cause submitted.

Court recessed at 9:44 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke
Clerk: D. Moore

D052816 People v. Corleone

Cause called on merits. Robert E. Boyce, Esq. argued for appellant. Christine Bergman, Deputy Attorney General argued for respondent. Cause submitted.

D052256 People v. Graham

D054791 In re Graham on Habeas Corpus

Cause called on merits. Charles R. Khoury, Esq. argued for appellant. Carrie Stringham, Certified Law Student argued for respondent. Mr. Khoury replied. Cause submitted as to appeal only.

D052052 People v. Irvin

Cause called on merits. Carl Fabian, Esq. argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

D053252 Bruno v. Matrixx Initiatives, Inc., et al.

Cause called on merits. Angela Bruno, argued for appellant in pro per. Alan Lazarus, Esq. argued for respondent. Mr. Bruno replied. Cause submitted.

D052927 GOFAT, LLC et al. v. Pilot, III

Cause called on merits. David A. Kay, Esq. argued for appellant. William Hamilton Scott Pilot, argued for respondent in pro per. Mr. Kay replied. Cause submitted.

D053672 Ollervides v. Cohen

Cause called on merits. David Hopkins, Esq. argued for appellant. Garrett Clark Dailey, Esq. argued for respondent. Mr. Hopkins replied. Cause submitted.

Court recessed at 3:41 p.m. until Wednesday, April 15, 2009 at 9:00 a.m.

D054929 In re Abraham M. on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Benke, McDonald and O'Rourke. Petitioner has not provided an adequate record for review. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
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**D054927 Musse et al. v. Superior Court of San Diego County/Yellow Cab of San
Diego, Inc., et al.**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D051981 Holley v. Cassidy Medical Group

Judgment affirmed. Appellant to pay respondent's costs on appeal.
Haller, J.; We Concur: McConnell, P.J., McIntyre, J.

D054553 In re Valeria B., a Juvenile

The appeal is dismissed. Nares, J.; We Concur: McConnell, P.J., O'Rourke, J.

D053649 People v. Zendejas

The judgment is affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D053150 EBS Concrete, Inc. v. Target Financial & Insurance Services et al.

Cause called on merits. Scott Irvin Richards, Esq. argued for appellant. Steven E. Bates, Esq. argued for respondent. Mr. Richards replied. Cause submitted.

D052384 Martinez v. Stevens, Inc.

Cause called on merits. Dwight F. Ritter, Esq. argued for appellant. David C. Skyer, Esq. argued for respondent. Mr. Ritter replied. Cause submitted.

Court convened at 9:27 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D053732 Conservatorship of Amanda B.

Cause called on merits. Neale Bachmann, Esq. argued for appellant. William Johnson, Deputy County Counsel argued for respondent. Ms. Bachmann replied. Cause submitted.

Court recessed at 9:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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April 15, 2009 (Continued)

D053432 Hazewinkel v. Macgurn

Cause called on merits. David Neal Shaver, Esq. argued for appellant. Gregor Alan Hensrude, Esq. argued for respondent. Mr. Shaver replied. Cause submitted.

D052842 Mataele v. Mataele

Cause called on merits. Isileli Mataele, argued for appellant in pro per. Ashley Brittain Mataele, argued for respondent in pro per. Mr. Mataele replied. Cause submitted.

Court recessed at 2:13 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D052319 People v. Lincoln General Insurance Company

Cause called on merits. Robert W. Hicks, Esq. argued for appellant. Leonard Pollard, Deputy County Counsel argued for respondent. Mr. Hicks replied. Cause submitted.

D053584 In re T. V. et al., juveniles

Cause called on merits. Neale Bachmann, Esq. argued for appellant D.E. Neil Trop, Esq. argued for the minor. Judith E. Klein, Esq. argued for respondent. Katharine Bird, Deputy County Counsel argued for the Agency. Ms. Bachmann replied. Cause submitted.

Court recessed at 3:02 p.m. until Thursday, April 16, 2009 at 9:00 a.m.

D054870 Taylor v. Superior Court of San Diego County/People

The petition for writ of mandate has been read and considered by Justices Benke, McDonald and O'Rourke. The petition is denied.

D054928 Haraszewski v. Superior Court of San Diego County/People

The request to have the petition for writ of mandate filed under seal is denied. The clerk is directed to return the petition to petitioner. Petitioner has 10 days from the date of this order within which to notify the clerk that the petition is to be filed. (Cal. Rules of Court, rule 8.160(e)(7).)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
April 15, 2009 (Continued)

D054910 In re Brown on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Benke, McDonald and O'Rourke.

William Brown filed this petition charging that prison officials have not properly maintained the Calipatria housing units to prevent leaks from rain. He indicates in the petition that he has not filed any other petitions with respect to this issue in any court.

"[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court." (In re Steele (2004) 32 Cal.4th 682, 692.) The petition is denied without prejudice to refile in San Diego Superior Court, P. O. Box 120128, San Diego, CA 92112. The clerk is directed to retain one copy of the petition for our records and to return the original petition and all other copies to Brown so he may file them in the appropriate court.

D054881 In re Thomas on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2009

D054707 Woodlands La Jolla Homeowners Association v. Sanesi

Respondent's opposed motion to dismiss appeal as untimely is granted.

D054898 People v. Thomas

Appellant filed a notice of appeal on March, 30, 2009, indicating he is appealing from the April, 23, 2008 judgment, and attached a request for certificate of probable cause. To the extent appellant is attempting to appeal the April 23, 2008 judgment, the appeal is both untimely and barred by the previous appeal. On November 18, 2008, this court affirmed the April 23, 2008 judgment in *People v. Thomas*, case number D052999, consolidated *In re Anthony Michael Thomas on Habeas Corpus*, case number D053866, for disposition with the appeal in D052999, and denied the petition. The remittitur issued on January 20, 2009. To the extent we liberally construe appellant's March 30, 2009 notice of appeal as an appeal from the superior court order filed February 13, 2009 denying his petition for writ of habeas corpus as appellant seems to suggest in his request for certificate of probable cause, the purported appeal is from a non-appealable order. For the above reasons, the appeal is dismissed.

D053944 People v. Burch

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. Moore

D052300 State of California, Department of Transportation v. Horner

Cause called on merits. Karen Ann Larson, Esq. argued for appellant. Christopher J. Welsh, Esq. argued for respondent. Ms. Larson replied. Cause submitted.

D053605 In re G. P., a minor

Cause called on merits. Valerie Lankford, Esq. argued for appellant. Douglas R. Donnelly, Esq. argued for respondents, G.I. and T.B. Kristine Elizabeth Pogalies, Esq. argued for respondent S.P., and joined in the oral argument of Mr. Donnelly. Terence M. Chucas, Esq. argued for the child, and joined in the oral argument of Mr. Donnelly. Ms. Lankford replied. Cause submitted.

Court recessed at 10:06 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
April 16, 2009 (Continued)

D052817 Zaya v. Chaker

Cause called on merits. Darren D. Chaker, argued for appellant in pro per. James Joseph Albert, Esq. argued for respondent. Mr. Chaker replied. Cause submitted.

Court recessed at 10:29 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. Moore

D052160 Rodriguez v. Rodriguez

Cause called on merits. Rock Zaitzow, Esq. was present in oral argument for appellant. William Carley Halsey, Esq. was present in oral argument for respondent. In open court, Mr. Zaitzow requested that oral argument be continued. Request granted and oral argument will be calendared in June. No further continuances will be allowed. Mr. Zaitzow is also granted 10-days from today's date, permission to put in writing, a request to the court requesting additional briefing.

D054001 In re D.C., a juvenile

Cause called on merits. Mark Ronald Turner, Esq. argued for appellant. Suzanne Evans, Esq. argued for the minor. Katharine Bird, Deputy Counsel argued for respondent. Mr. Turner replied. Cause submitted.

Court recessed at 1:58 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D052768 S. v. S.

Cause called on merits. Teresa Trucchi, Esq. argued for appellant. Cause submitted.

D052831 People v. Bates, Jr.

Cause called on merits. Barbara A. Smith, Esq. argued for appellant. Jeffrey Koch, Deputy Attorney General argued for respondent. Ms. Smith replied. Cause submitted.

Court recessed at 2:40 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2009 (Continued)

D052350 People v. Chau

Cause called on merits. Carl Fabian, Esq. argued for appellant. Steve Oetting, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 3:26 p.m. until Friday, April 17, 2009 at 9:00 a.m.

D054882 In re Thomas on Habeas Corpus

The petition is denied.

D054905 Meade v. Superior Court of San Diego County/Rioux

The petition is denied.

D054924 Reiswig v. Superior Court of San Diego County/People

The petition is denied.

D054533 Hguyen v. Superior Court of San Diego County/People

The decision denying the petition for writ of mandate was final as to this court when the order was filed on March 17, 2009. (Cal. Rules of Court, rule 8.490(b)(1).) The court no longer has the authority to modify or clarify the decision. (See Cal. Rules of Court, rules 8.490(a), 8.264(c)(1).) The motion for clarification is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
April 17, 2009

D053341 People v. Morgan

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D053202 In re Hector G., a Juvenile

The true findings are affirmed. The dispositional judgment is reversed. The case is remanded to the juvenile court for a new dispositional hearing in accordance with the opinion. Haller, J.; We Concur: McConnell, P.J., O'Rourke, J.

D054907 In re Brown, II on Habeas Corpus

The petition is denied without prejudice to refile in San Diego Superior Court, P. O. Box 120128, San Diego, CA 92112. The clerk is directed to retain one copy of the petition for our records and to return the original petition and all other copies to Brown so he may file them in the appropriate court.

D052388 People v. Lee

The judgment is affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D054042 County of San Diego v. Davis

The matter having been considered by Presiding Justice McConnell and Associate Justices McDonald and O'Rourke, the appeal is dismissed on the ground it is from a nonappellable, interlocutory order. Appellant's application for extension of time to file his opening brief is moot.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke
Clerk: D. Moore

D053916 In re A. H., a juvenile

Cause called on merits. Elizabeth Alexander, Esq. argued for appellant I.A. Julie E. Braden, Esq. argued for appellant A.H. Lisa Maldonado, Deputy County Counsel argued for respondent. Cause submitted.

D052336 Fisher v. SDG&E et al.

Cause called on merits. Leon E. Campbell, Esq. argued for appellant. William A. Calders, Esq. argued for respondent SDG&E. Stephanie Alexander, Esq. argued for respondent Asplundh Tree Expert Co., Inc. Michael G. Arkin, Esq. was present in oral argument for respondent Western Environmental Consultants, Inc., and submitted on the briefs. Mr. Campbell replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

April 17, 2009 (Continued)

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D051833 Clymer et al. v. Champagne et al.

Cause called on merits. No appearance by Paul Sowa, Esq. counsel for appellant. Gerry C. Schmelter, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

Court recessed at 9:38 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

D053335 In re Jose T. et al., juveniles

Cause called on merits. Cristina Gabrielidis, Esq. argued for appellant V.T. Valerie Lankford, Esq. argued for appellant A.T. M. Elizabeth Handy, Esq. argued for the children. Lisa Maldonado, Deputy County Counsel argued for respondent. Ms. Gabrielidis replied. Cause to be submitted at a later date.

Court recessed at 10:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion
Clerk: D. Moore

D052214 People v. Shepard

Cause called on merits. Daniel J. Kessler, Esq. argued for appellant. Jeffrey Koch, Deputy Attorney General argued for respondent. Cause submitted.

D052993 Smith et al. v. Pacific Law Center

Cause called on merits. David Hayek, Esq. argued for appellant. Gregor Alan Hensrude, Esq. argued for respondent. Mr. Hayek replied. Mr. Hayek granted 5 days to respond to the Meyer case, only. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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April 17, 2009 (Continued)

D050842 People v. Eliseo

Cause called on merits. Charles R. Khoury, Esq. argued for appellant. Natasha Cortina, Deputy Attorney General argued for respondent. Mr. Khoury replied. Cause to be submitted at a later date. Court granted parties permission to file supplemental letter briefs.

Court recessed at 2:27 p.m. to change panels. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and the Honorable Associate Justices Richard Huffman and Judith Haller

D053616 Gandy v. Housing Authority of the County of San Diego et al.

Cause called on merits. Jarvis E. Gandy, argued for appellant in pro per. James R. O'Day, Esq. argued for respondent. Cause submitted.

Court adjourned at 2:37 p.m.